

ORIGINIAL

(83)
8-28-02
SC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED

HARRISBURG, PA

AUG 27 2002

MARY E. ANDREA, CLERK
Per bf Deputy Clerk

KIM SMITH,

:

Plaintiff,

:

Civil No. 1:01-0817

:

v.

:

(Judge William W. Caldwell)

:

JAMES MORGAN, et al.,

:

(Magistrate Judge Malachy E. Mannion) ✓

:

Defendants.

:

**CORRECTIONS DEFENDANTS' MOTION FOR
DISCOVERY AND DISPOSITIVE MOTION DEADLINES**

The Corrections Defendants', by and through their attorney, John J. Talaber, Assistant Counsel, and with the consent of the non-Corrections Defendants, respectfully request this Honorable Court to set a discovery deadline in this matter for October 11, 2002, and a dispositive motion deadline in this matter for November 11, 2002. The following averments are made in support of this Motion:

Parties and Nature of Action:

1. Plaintiff Kim Smith is an inmate currently incarcerated at the State Correctional Institution at Coal Township ("SCI-Coal Township"). See Amended Complaint (doc. 20), p. 12.

2. The Department of Corrections Defendants ("Corrections Defendants") include: (1) Kathy Allen; (2) Nancy Ambrose; (3) Mary Bernas; (4) Sharon Burks; (5) Kandis Dascani; (6) John Dunn; (7) Harry Ersek; (8) Frank Gillis; (9) Robert Glenny; (10) Robert Gooler; (11) Dr. Robyn Johns; (12) Roy Johnson; (13) Tim Jordan; (14) Bernon Lane; (15) John Learn; (16) Edward Mason; (17) Miller; (18) James Morgan; (19) Wilma Sewell; (20) Raymond Smith; (21) David Varano; (22) Voeckler; (23) George Weaver; (24) Lynn Wolfgang; (25) Gerald Whysong; (26) Pat Yarger; (27) Angela Zimmerman; and (28) Hazel Zimmerman. See Amended Complaint, pp. 1-16.
3. Smith also names as Defendants Wexford Health Services, Inc. and Dr. Ronald Long, who are represented by James D. Young, Esquire. See Entry of Appearance (doc. 28).
4. In this 42 U.S.C. §1983 action, Smith alleges that the Corrections Defendants violated his First, Eighth, and Fourteenth Amendment rights under the United States Constitution. See Amended Complaint, pp. 1-16.
5. Smith is suing the Corrections Defendants in their individual capacities. See Amended Complaint, p.8.
6. Smith seeks injunctive relief, as well as, compensatory and punitive damages. See Amended Complaint, pp. 1-16.

Relevant Procedural History:

7. Smith initiated this action with the filing of a Complaint and an Application for In Forma Pauperis status on May 10, 2001. See Complaint (doc. 1); Application to proceed IFP (doc. 2).
8. The Court, by Order dated June 6, 2001, directed Smith to file an Amended Complaint on or before July 6, 2001. See Order (doc. 8).
9. On July 11, 2001, Smith filed an Amended Complaint. See Amended Complaint (doc. 20).
10. On August 3, 2001, the Court found that Smith's Amended Complaint substantially complied with its previous orders, and directed the Clerk of Court to serve process on the Defendants. See Order (doc. 24).
11. On November 6, 2001, the Corrections Defendants waived their right to reply to Smith's Amended Complaint pursuant to 42 U.S.C. §1997(e). See Waiver of Reply (doc. 33).
12. On December 6, 2001, the Court directed the Defendants to file responses to Plaintiff's three *pro se* Motions for Temporary Restraining Orders. See Order (doc. 40).
13. After the issues were fully briefed, the Honorable Malachy E. Mannion issued a Report and Recommendation that denied all three Motions for TROs, that was adopted by the Honorable William W. Caldwell by Order

dated March 29, 2002. See Report and Recommendation (doc. 57); Order (doc. 58).

14. Discovery has been ongoing in this action since July 2001.

Motion to Set Discovery and Dispositive Motion Deadlines:

15. The Corrections Defendants, by and through the undersigned attorney, respectfully request that this Honorable Court to a discovery deadline in this matter as October 11, 2002 and a dispositive Motion deadline for November 11, 2002.

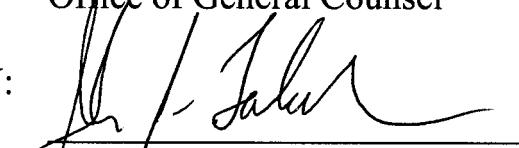
16. Currently pending before the Court are a number of discovery related matters that can be disposed of prior to the October 11, 2002 proposed deadline.

17. In consultation with Mr. Young, it was agreed that a discovery deadline and dispositive motion deadline in this matter would aid the Defendants in obtaining a timely resolution of this action. Plaintiff too would benefit in having firm deadlines for a timely resolution of the many allegations contained in his Complaint and his multiple motions for injunctive relief.

WHEREFORE, for the reasons set forth above, the Corrections Defendants respectfully request the Court to set the discovery deadline in this matter for October 11, 2002, and the dispositive motion deadline as November 11, 2002. In the alternative, the undersigned attorney requests the Court to set deadlines that it deems appropriate in the interest of justice and fairness to all parties involved.

Respectfully submitted,
Office of General Counsel

BY:



John J. Talaber
Assistant Counsel
Pa. Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Attorney No. 83279

Dated: August 27, 2002

IN THE UNITED STATES DISTRICT COURT
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KIM SMITH, :
Plaintiff, :
v. : Civil No. 1:01-0817
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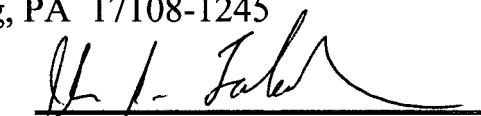
CERTIFICATE OF SERVICE

I undersigned hereby certifies that a copy of the Corrections Defendants' Motion for Discovery and Dispositive Motion Deadlines in this matter was served upon the person(s) in the manner indicated below.

Service by first-class mail
addressed as follows:

Kim Smith, CT-2162
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020

James D. Young, Esquire
Lavery, Faherty, Young and Patterson, P.C.
301 Market Street
P.O. Box 1245
Harrisburg, PA 17108-1245



John J. Talaber
Assistant Counsel

PA Department of Corrections
55 Utley Drive
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(717) 731-0444
Dated: August 27, 2002